

LEASE OF WHITE PASS AND YUKON RAILWAY

*Exchange of notes at Ottawa February 22 and 23, 1943, with Canadian
Order in Council of November 6, 1942
Entered into force February 23, 1943
Terminated by agreement of March 31, 1960¹*

57 Stat. 1423; Executive Agreement Series 390

*The Secretary of State for External Affairs to the American Chargé d'Affaires
ad interim*

DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

No. 17

OTTAWA, February 22, 1943

SIR,

I have the honour to refer to the correspondence and negotiations with regard to the White Pass and Yukon Route. I am enclosing for your information a copy of an Order in Council P. C. 10067, dated the 6th of November, 1942. This Order in Council is in terms which have already met with your approval, and which establish the legal foundation for the operation and maintenance by the Government of the United States of America for the duration of the war of the Railway owned by the British Yukon Railway Company and the British Columbia – Yukon Railway, which form parts of the White Pass and Yukon Route.

2. The arrangements which have been agreed upon contemplate that there may be agreements concluded between the Government of the United States of America and the Government of Canada, or the Government of the Province of British Columbia, in respect of matters within the jurisdiction of such governments. It is my understanding that the authorities of your Government who are interested in this matter considered that such agreements should be of a flexible character, and should be entered into by recording, from time to time, by Exchange of Notes, arrangements which concern the two Governments. It is likely that in the course of the operation of the White Pass and Yukon Route further matters will arise requiring modifications and changes, and that your Government and mine will co-operate in

¹ 11 UST 2486; TIAS 4631.

bringing these about. There are, however, certain understandings which have already met with the approval of the interested departments of the two Governments during the negotiations at the meeting which was held on October 16, 1942.

3. Accordingly, it is desirable to place on record the following understandings:

(1) The monthly rental is to be paid by the United States Government in United States Dollars, and insofar as United States taxation is concerned is to be net to the companies.

(2) The Canadian Government will continue to charge against the Canadian companies, namely the British Columbia – Yukon Railway Company and the British Yukon Railway Company in the usual manner all taxes other than taxation of operating income. For the terms of the lease, corporation income taxes will be based upon income from rental only and there will be no taxation of operating profits as such. Similarly, it is open to the Province of British Columbia to continue to charge against the British Columbia – Yukon Railway Company such taxes as it has heretofore imposed upon the company, without regard to the operation of the White Pass and Yukon Route by the United States Government.

(3) Civilian personnel resident in Canada will pay taxes to the Canadian Government, even though they are actually employed by the United States Government. Civilian employees resident in United States territory and United States Army personnel will not, by reason of their employment on the White Pass and Yukon Route, be subject to Canadian taxation.

(4) Civilian personnel will be subject to local Workmen's Compensation and Unemployment Insurance laws and regulations in the same manner as if they were directly employed by the Canadian companies. This will apply only to civilian personnel residing in Canadian territory, and will have no application to United States Army personnel or civilian personnel resident in United States territory. United States authorities will supply the necessary information to the Workmen's Compensation and Unemployment Insurance authorities, but will not be required to make deductions at the source.

(5) The United States Government will furnish by February 15 of each year full information with respect to remuneration paid to civilian personnel resident in Canada, but will not be required to make deductions at the source for taxation purposes.

(6) The annual operating report to the Board of Transport will be made in the joint names of the two Canadian companies. This report will show substantially the same information as it has heretofore, with the exceptions that operating statistics will be omitted, and that the only income shown in the reports will be the annual rental received from the United States Govern-

ment. If required by the Board, operating statistics will be furnished by the United States Military Railway Service.

Accept, Sir, the renewed assurances of my highest consideration.

N. A. ROBERTSON
for
*Secretary of State
for External Affairs*

THE CHARGÉ D'AFFAIRES AD INTERIM,
*Legation of the United States of America,
Ottawa, Canada.*

ORDER IN COUNCIL

P. C. 10067
PRIVY COUNCIL
CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA
FRIDAY, THE 6TH DAY OF NOVEMBER, 1942
PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS the Secretary of State for External Affairs reports that—

(1) The Government of the United States of America wishes to lease from its present owners, for the purpose of the operation and maintenance thereof for the duration of the state of war now existing subject to prior termination, the railway known as the White Pass and Yukon Route, which runs from Skagway, Alaska, across British Columbia to Whitehorse, Yukon Territory.

(2) The Secretary of State for External Affairs is of opinion that, by reason of the state of war now existing, it is advisable for the security and defence of Canada and in particular of the west coast of Canada, that the owners of the said railway be authorized and empowered to enter into a lease of the railway for such purpose and that the Government of the United States of America be authorized to lease and maintain and operate the said railway for the duration of the state of war now existing.

(3) (a) The Alaska part of the railway is owned by the Pacific and Arctic Railway and Navigation Company, a West Virginia corporation.

(b) The Yukon part of the railway is owned by the British Yukon Railway Company (hereinafter called the Dominion Company), which was incorporated by Chapter 89 of the Statutes of Canada 60–61 Victoria, subsequently amended by 63–64 Victoria, Chapter 53; 1 Edward VII, Chapter 50; and 7–8 Edward VII, Chapter 88.

(c) The British Columbia part of the railway is owned by the British Columbia – Yukon Railway Company (hereinafter called the B. C. Com-

pany), which was incorporated by Chapter 49 of the Statutes of British Columbia, 1897.

(4) The Government of the United States of America has informed the Secretary of State for External Affairs that it intends to operate and maintain in so far as it is practicable, the part of the said railway in Canada during the term of the said lease in accordance with all laws in force in Canada, and all regulations, orders and tariffs made or established pursuant thereto, relating to or applicable in respect of the operation and maintenance of the said part of the railway in Canada in the same manner, unless inconsistent with the maximum war effort, as if such part of the said railway were being operated during such term by the Dominion and B.C. companies and in particular that it intends that:

(a) any lawful order of the Board of Transport Commissioners for Canada or of the Government of the Province of British Columbia addressed to or binding on the Dominion company or B. C. company during the term of the lease will be complied with;

(b) arrangements will be made to provide for the payment during the term of the lease of all taxes and of all assessments, contributions and other levies in respect of workmen's compensation or unemployment insurance in the same manner and to the same extent as if the said part of the railway were operated during the term of the lease by the Dominion and B. C. companies and for all such purposes the operation and maintenance of the part of the said railway in Canada shall be deemed to be carried on during the term of the said lease on behalf of the said companies subject to any special arrangement made between the Government of the United States and the Government of Canada or of the Government of the Province of British Columbia;

(c) any claim of any person in respect of loss or damage in any way arising out of the operation or maintenance of the said railway in Canada during the term of the lease will be dealt with as a claim against the company which is the owner of the part of the railway with respect to the operation or maintenance of which the claim is made and for such purpose and for the purpose of any legal proceedings in respect thereof the said part of the railway will be deemed to be operated and maintained by the said company during the term of the lease and all persons engaged in such operation or maintenance by the Government of the United States will be deemed to be agents or officers, servants or employees, as the case may be, of the said company;

(d) the railway will be operated and maintained during the term of the lease as a common carrier under the law in force in Canada applicable thereto and will carry all normal traffic and render all normal services and the interests of Canadian users of the railway will not be prejudiced by reason of the lease;

(e) if provision is made for the carrying into effect of the said lease in

the foregoing manner, the Government of the United States will indemnify and keep whole the said companies in respect of any liability incurred by such companies by reason thereof.

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, concurred in by the Minister of Transport, and under and by virtue of the powers conferred on the Governor in Council by the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to order and doth hereby order as follows—

1. Notwithstanding any provisions to the contrary in the laws incorporating the British Yukon Railway Company and British Columbia – Yukon Railway Company or in the Railway Act of Canada or in any other law in force in Canada;

(a) the British Yukon Railway Company and the British Columbia – Yukon Railway Company are, subject to the provisions of paragraph 2 of this Order, empowered and authorized to lease the railways owned by such companies respectively, to the United States of America for the duration of the state of war now existing;

(b) the United States of America is authorized to operate and maintain for the duration of the state of war now existing, the said railways owned by the British Yukon Railway Company and the British Columbia – Yukon Railway Company.

2. Notwithstanding anything contained in the terms of any lease entered into under the authority of this order, the part of the railway known as the White Pass and Yukon Route in Canada so leased, shall be deemed, for the purpose of all laws in force in Canada and all regulations, orders, or tariffs made or established pursuant thereto, to be constructed, operated and maintained during the term of such lease by the British Yukon Railway Company and the British Columbia – Yukon Railway Company in respect of the part thereof owned by each such company, and each such company shall, in respect of the construction, operation and maintenance during the term of the lease of the part of the said railway owned by it, be liable under such laws, regulations, orders or tariffs in all respects as if it were constructing, operating and maintaining such part of the railway and without restricting the generality of the foregoing, each such company shall, in respect of the construction, operation and maintenance during the term of the lease of the part of the said railway owned by it, be liable:

(a) for any failure or omission to comply with or any contravention of any lawful order of the Board of Transport Commissioners for Canada or by the Government of the Province of British Columbia addressed to or binding on the said company during the term of the lease;

(b) to pay taxes and to pay any assessments, contributions or other levies

in respect of workmen's compensation or unemployment insurance to the same extent as if the construction, operation and maintenance of the railway during the term of the lease was carried on by the company, and for such purpose the construction, operation and maintenance of the railway during the term of such lease shall be deemed to be carried on on behalf of the company, unless such liability is expressly limited or altered in accordance with any agreement between the United States of America and the Government of Canada or of the Government of the Province of British Columbia in respect of matters within the jurisdiction of such governments respectively;

(c) in respect of any act or omission of any person engaged in the construction, operation or maintenance of such railway during the term of the lease by the Government of the United States in the same manner and to the same extent as if such person was an agent or an officer, servant or employee of the company, as the case may be, employed in the construction, operation and maintenance of the railway by the company.

3. The word "railway" as used in this Order includes all branches, extension, sidings, stations, depots, wharves, rolling stock, equipment, stores, bridges, tunnels and other structures, property real and personal and works connected therewith.

A. D. P. HEENEY
Clerk of the Privy Council

*The American Chargé d'Affaires ad interim to the Secretary of State
for External Affairs*

LEGATION OF THE
UNITED STATES OF AMERICA
Ottawa, February 23, 1943

No. 842

SIR:

I have the honor to acknowledge the receipt of your Note No. 17 of February 22, 1943, regarding the operation and maintenance by the Government of the United States of America for the duration of the war of the railway owned by the British Yukon Railway Company and the British Columbia — Yukon Railway, which form parts of the White Pass and Yukon Route.

I wish to confirm that the understandings of the Canadian Government, as outlined in your note, conform with those of my Government.

Accept, Sir, the renewed assurances of my highest consideration.

LEWIS CLARK
Chargé d'Affaires ad interim

The Right Honorable
THE SECRETARY OF STATE
FOR EXTERNAL AFFAIRS,
Ottawa.